

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6378

PETITION OF CHERYL BARNDS

(Hearings held February 29 and May 2, 2012)

OPINION OF THE BOARD

(Effective date of Opinion, July 13, 2012)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a) and 59-B-3.1. The petitioner proposes the construction of a one-story addition and a two-story addition that requires a variance of twelve (12) feet. The required front lot line setback (Maplewood Avenue) is twenty-five (25) feet.

Richard Vitullo, an architect, represented the petitioner at the public hearing.

The subject property is Lot 32, Block 52, located at 8001 Maple Avenue, Takoma Park, Maryland, 20912, in the R-40 Zone (Tax Account No. 01065615).

Decision of the Board: Requested variance for the two-story addition **granted**.
Requested variance for the deck **denied**.

EVIDENCE PRESENTED TO THE BOARD

Testimony presented on February 29, 2012

1. The petitioner proposes the construction of a 14.6 x 19 foot two-story addition and the construction of a 13.6 x 19 foot screened porch.
2. Mr. Vitullo testified that the subject property is a corner lot located at the intersection of Maple and Maplewood Avenues. He testified that the intersection of the two streets creates an acute angle at the subject property's northern boundary, which reduces the lot's buildable area. He testified that the lot is an irregular, wedge-shaped lot that is 5,949 square feet and that it less than the required minimum lot size for the R-40 Zone. See Exhibit Nos. 4(a) [site plan], 4(c) [proposed site plan], 5(e) [proposed 1st floor plan], 5(f) [proposed 2nd floor plan].

He testified that the existing house is built into the hillside of the lot and that the topography in the western front yard drops severely about nine feet from the house to the street (Maplewood). He testified that the topography also drops in eastern front yard about six to seven feet from the house to Maple Avenue. He testified that the topography in the northeast/rear yard of the lot flattens. He testified that the application of the required setbacks to the subject property reduces its buildable envelop to 21%. He testified that the property has a very large Oak tree located in the property's front yard and that the City of Takoma Park requires that any new construction on the petitioner's lot must be pushed away from this tree to avoid cutting or crushing the tree's roots.

3. The proposed two-story addition encroaches into the western front yard setback approximately 2.50 feet, while the proposed screened porch would encroach into the western front yard setback approximately 12 feet. The Board notes that while the conditions and circumstances of the subject property would satisfy the Ordinance's uniqueness criteria, the proposed screened porch does not satisfy the criteria for the minimum reasonably necessary, as the majority of the proposed encroachment into the western front yard setback would be by the screened porch. The Board notes that the screened porch could still be built with a considerably smaller footprint. The variance hearing was continued to permit the petitioner to review the variance request.

Testimony presented on May 2, 2012

4. The petitioner amended the variance request and proposes the construction of a 14.6 x 19 foot two-story addition and the construction of a 13 x 19 foot deck. See Exhibit Nos. 13(a) [DPS stamped site plan], 13(b) [proposed 1st floor plan], 13(c) [proposed 2nd floor plan], 15 [neighborhood plan].
5. Mr. Vitullo submitted a neighborhood plan that showed the varying house locations within 300 feet of the subject property on Maple and Maplewood Avenues. He testified that proposed deck would extend three feet in the front lot line setback (Maplewood Avenue) and that the proposed two-story addition would extend 2.50 feet into the front lot line setback (Maplewood Avenue).

In response to questions from the Board, Mr. Vitullo testified that the footprints for the originally requested screened porch and the revised request for a deck are different, but very similar. Section 59-B-3.1 of the County's Zoning Ordinance permits a nine foot exemption for decks to intrude into a rear yard. Mr. Vitullo testified that the revised request for a deck reduces the bulk and depth of the new construction.

He testified that the distance from the front yard boundary for the proposed screened porch and for the deck are the same. He testified that the revised request for the deck would not extend significantly any farther into the setbacks than other existing decks and screened porches on Maple and Maplewood Avenues.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the construction of a deck must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that while the subject property is an irregularly shaped lot that is slightly substandard in size for the R-40 Zone, with a large, mature Oak tree in its eastern front yard that requires that any new construction must be pushed back to avoid cutting or crushing the tree's root system, the Board finds that the construction of deck in the western front yard could be built with a significantly smaller footprint and still permit the construction of a deck in this area of the petitioner's lot.

The petition for the construction of a deck does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of three (3) feet from the required sixteen (16) foot front lot line setback (Maplewood Avenue) for the construction of a deck is **denied**.

Board member Stanley B. Boyd was necessarily absent and did not participate in this Resolution. On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Walter S. Booth, in agreement, and with Catherine G. Titus, Chair, in opposition, the Board adopted the above Resolution.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the construction of a two-story addition can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual

practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property is 5,949 square feet, which is a slightly irregularly shaped lot and that it is substandard in size for the R-40 Zone. The subject property is a corner lot at the intersection of Maple and Maplewood Avenues. The Board finds that the acute angle at the lot's northern boundary of the intersection of the two roads significantly impacts the lot's buildable area. The Board finds that the lot's has a severe drop in its topography in the eastern and western front yards. Board finds that the subject property has a very, large Oak tree located in the eastern front yard [Maple Avenue] and that the City of Takoma Park requires that any new construction on the lot must be pushed away from this tree to avoid cutting or crushing the tree's roots. The Board finds that these are exceptional circumstances and conditions peculiar to the subject property that the application of the County's zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a two-story addition is the minimum reasonably necessary. The Board notes the only 2.50 feet of the proposed structure encroaches into the northwest front yard boundary (Maplewood Avenue).

(c) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the proposed construction of a two-story addition will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed two-story addition will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 2.50 feet from the required twenty-five (25) foot front lot line (Maplewood Avenue) for the construction of a two-story addition is **granted** subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 13(a) [DPS stamped site plan] and 13(b) through 13(f).

The Board adopted the following Resolution:

Board member Stanley B. Boyd was necessarily absent and did not participate in this Resolution. On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Catherine G. Titus, Chair and Walter S. Booth, in agreement, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 13th day of July, 2012.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.